

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

DECISION AND ORDER  
05-CR-71

HONG WAH CHENG,

Defendant.

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A criminal complaint was filed in this matter on September 20, 2002, charging defendant with various narcotics related offenses. This case was referred to Magistrate Judge H. Kenneth Schroeder for supervision of all pretrial proceedings. On September 23, 2002, defendant was released on \$5,000 secured bail. As part of his conditions of release, defendant, a resident of Fort Erie, Ontario, was allowed to return to his residence in Canada while the matter was pending. After a number of adjournments requested by the parties, a preliminary hearing was scheduled for July 30, 2003. Defendant failed to appear at that time and the Government advised the Court that defendant was considered a fugitive.

The Government did not file an indictment in this matter until March 16, 2005. (Dkt. No. 17) The Government then waited almost five years, until May 27, 2010, to undertake formal steps to have the defendant extradited from Canada.

Defendant surrendered to Canadian authorities on August 19, 2011, was turned over to United States authorities on February 23, 2012 and was arraigned on February 24, 2012.

On October 3, 2012, defendant filed a motion to dismiss the indictment based upon a violation of his Sixth Amendment right to a speedy trial. (Dkt. Nos. 39 and 40) The Government submitted a response in opposition. (Dkt. No. 42) Oral argument with respect to defendant's pre-trial motions, including his motion to dismiss the indictment, was held before Magistrate Judge Schroeder on November 7, 2012.

Magistrate Judge Schroeder then issued a Report, Recommendation and Order recommending that defendant's motion to dismiss the indictment based on a violation of his right to a speedy trial under the Sixth Amendment of the Constitution be granted. (Dkt. No. 45) On February 6, 2013, the Government submitted objections to the Magistrate Judge's Report and Recommendation. (Dkt. No. 48) The defendant filed a response to the Government's objections and the Government filed a reply. (Dkt. Nos. 51 and 52) Oral argument was held before this Court on April 17, 2013.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review and after reviewing the submissions of the parties and hearing oral argument, the Court adopts the

proposed findings of the Report, Recommendation and Order in their entirety.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report, Recommendation and Order, defendant's motion to dismiss the indictment based upon a violation of his right to a speedy trial under the Sixth Amendment of the Constitution is granted. The Clerk of the Court is instructed to close the case. The Clerk of the Court is also instructed to immediately provide a copy of this Decision and Order to the United States Marshal's Service. The United States Marshal's Service is directed to release defendant Hong Wah Cheng from custody.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: April 19, 2013